

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Darlington Veneer Company,

Plaintiff,

v.

Philadelphia Indemnity Insurance
Company,

Defendant.

Civil Action No. 4:14-cv-00756-RBH

**CONSENT ORDER GRANTING
PARTIAL DISMISSAL**

Philadelphia Indemnity Insurance
Company,

Counter-Plaintiff,

v.

Darlington Veneer Company,

Counter-Defendant.

In this insurance coverage dispute, the Plaintiff/Counter-Defendant requests a declaratory judgment holding that an insurance policy issued by Philadelphia Indemnity Insurance Company (“Philadelphia”) provides coverage for claims asserted against it in a lawsuit styled *MICHAEL R. NEWSOM AND NANCY H. NEWSOM v. DARLINGTON VENEER COMPANY*, Case No. 2011-CP-31-00030 (the “Newsom Lawsuit”), which was filed in the Court of Common Pleas for Lee County, South Carolina on or about February 2, 2011. Philadelphia asserts the policy provides no coverage and, by way of counterclaim, requests a declaratory judgment holding that the Plaintiff/Counter-Defendant is not entitled to coverage for the Newsom Lawsuit.

In addition to declaratory judgment and breach of contract claims, the Plaintiff/Counter-Defendant has also asserted causes of action for bad faith and attorneys' fees pursuant to S.C. Code Ann. § 38-59-40. Philadelphia moved to dismiss those causes of action in a Motion for Partial Judgment on the Pleadings (Docket No. 10), arguing that the cause of action for bad faith fails to state a claim upon which relief can be granted because it contains no factual allegations and that the cause of action for attorneys' fees, which is dependent on a finding of bad faith, should likewise be dismissed. The parties now advise that the Plaintiff/Counter-Defendant will consent to dismissal of the causes of action for bad faith and attorneys' fees without prejudice, but the Plaintiff/Counter-Defendant reserves the right to reassert those causes of action should it appear through discovery or continued fact investigation that the causes of action are viable.

NOW, THEREFORE, for good cause shown and based on the consents shown below,

IT IS ORDERED that the Complaint's third and fourth causes of action for bad faith and attorneys' fees are dismissed without prejudice.

IT IS FURTHER ORDERED that the Plaintiff/Counter-Defendant shall have the right to reassert its causes of action for bad faith and attorneys' fees should it appear through discovery or continued fact investigation that the causes of action are viable. However, the deadlines in the scheduling order (ECF No. 7) for motions to amend the pleadings remain in effect.

IT IS FURTHER ORDERED that any motion by the Plaintiff/Counter-Defendant to reassert its causes of action for bad faith and attorneys' fees shall describe all facts which plausibly entitle the Plaintiff/Counter-Defendant to relief on those causes of action.

AND IT IS SO ORDERED.

s/R. Bryan Harwell
R. Bryan Harwell
United States District Judge

April 21, 2014
Florence, South Carolina

WE CONSENT:

s/Curtis W. Dowling
CURTIS W. DOWLING, Dist.Ct.Id.No. 4185
MATTHEW G. GERRALD, Dist.Ct.Id.No. 10055
BARNES, ALFORD, STORK & JOHNSON, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, South Carolina 29202
803.799.1111 (Office)
803.254.1335 (Fax)
curtis@basjlaw.com
matt@basjlaw.com
Attorneys for Philadelphia Indemnity Insurance Company

s/Jeffrey L. Payne
JEFFREY L. PAYNE, Dist.Ct.Id.No. 5266
TURNER, PADGET, GRAHAM & LANEY, P.A.
319 South Irby Street (29501)
Post Office Box 5478
Florence, South Carolina 29502
843.662.9008 (Office)
843.667.0828 (Fax)
jpayne@turnerpadget.com
Attorneys for Darlington Veneer Company